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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/922,405	08/03/2001	Charles A. Nicolette	GZ 210300	7264

7590

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EXAMINER

RAWLINGS, STEPHEN L

ART UNIT

PAPER NUMBER

1642

DATE MAILED: 09/08/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/922,405

Applicant(s)

NICOLETTE, CHARLES A.

Examiner

Stephen L. Rawlings, Ph.D.

Art Unit

1642

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 June 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-9 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *Election facsimile cover sheet*.

### **DETAILED ACTION**

1. The amendment filed June 4, 2002 in Paper No. 10 is acknowledged and has been entered.
2. Claims 1-9 are pending in the application and are currently subject to the following restriction.

#### ***Election/Restrictions***

3. Restriction to one of the following inventions is required under 35 U.S.C. 121:

Groups 1-4,083. Claims 1-3 and 9, insofar as the claims are drawn to a composition comprising at least two immunogenic ligands, wherein said ligands are selected from the group consisting of SEQ ID NO: 3, SEQ ID NO: 5, SEQ ID NO: 7, SEQ ID NO: 9, SEQ ID NO: 11, SEQ ID NO: 13, SEQ ID NO: 15, SEQ ID NO: 17, SEQ ID NO: 19, SEQ ID NO: 21, SEQ ID NO: 23, and SEQ ID NO: 25, and a method for inducing an immune response comprising delivering to a subject said composition, classified in class 424, subclass 185.1.

Note: Claims 1-3 and 9 are drawn to a composition or a method for using said composition, wherein said composition comprises two or more ligands, wherein said ligands are selected from a group consisting of twelve different ligands; therefore, the claims encompass 4,083 different inventions wherein said composition comprises a different set of two or more of the recited ligands, including, for example, the inventions wherein said composition comprises each of the twelve ligands, or only two of the ligands. Therefore, in reply to this Office action, if Applicant wishes to elect one of the inventions of groups 1-4,083, Applicant is required to elect a single disclosed invention by identifying the specific composition

comprising at least two of the recited ligands to which the claims are to be drawn during examination. For example, Applicant might elect the invention wherein said composition comprises SEQ ID NO: 3 and SEQ ID NO: 5, or alternatively SEQ ID NO: 3, SEQ ID NO: 5, and SEQ ID NO: 25.

Groups 4,084-8,166. Claims 4-8, insofar as the claims are drawn to a host cell comprising at least two immunogenic ligands, wherein said ligands are selected from the group consisting of SEQ ID NO: 3, SEQ ID NO: 5, SEQ ID NO: 7, SEQ ID NO: 9, SEQ ID NO: 11, SEQ ID NO: 13, SEQ ID NO: 15, SEQ ID NO: 17, SEQ ID NO: 19, SEQ ID NO: 21, SEQ ID NO: 23, and SEQ ID NO: 25, classified in class 435, subclass 325+, for example.

Note: In reply to this Office action, if Applicant wishes to elect one of the inventions of groups 4,084-8,166, Applicant is required to elect a single disclosed invention by identifying the specific host cell comprising at least two of the recited ligands to which the claims are to be drawn during examination. For example, Applicant might elect the invention wherein said host cell comprises SEQ ID NO: 3 and SEQ ID NO: 5, or alternatively SEQ ID NO: 3, SEQ ID NO: 5, and SEQ ID NO: 25.

4. The inventions are distinct, each from the other because of the following reasons:

The inventions in groups 1-8,166 are disclosed as biologically and chemically distinct, unrelated in structure and/or function, and/or made by and/or used in different methods, and therefore the claimed products are distinct.

The inventions in groups 1-4,083 are disclosed as materially different methods that differ at least in objectives, method steps, reagents and/or doses and/or schedules used, response variables, assays for end products and/or results, and criteria for success, and therefore the claimed methods are distinct.

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5. Because these inventions are distinct for the reasons given above and also because the search required for any one group is not required for any other group and/or the inventions have acquired a separate status in the art as shown by their different classification or their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

6. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

### ***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen L. Rawlings, Ph.D. whose telephone number is (703) 305-3008. The examiner can normally be reached on Monday-Friday, 8:30AM-5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony C. Caputa, Ph.D. can be reached on (703) 308-3995. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Stephen L. Rawlings, Ph.D.  
Examiner  
Art Unit 1642

  
STEPHEN RAWLINGS

slr  
September 4, 2003



# RESTRICTION ELECTION FACSIMILE TRANSMISSION

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